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SENATE BILL 93

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

William E. Sharer

AN ACT

RELATING TO DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; INCREASING PENALTIES FOR FIFTH AND SUBSEQUENT DWI CONVICTIONS; AMENDING A SECTION OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 66-8-102 NMSA 1978 (being Laws 1953, Chapter 139, Section 54, as amended) is amended to read:

"66-8-102. PERSONS UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS--AGGRAVATED DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS--PENALTY.--

A. It is unlawful for a person who is under the influence of intoxicating liquor to drive a vehicle within this state.

B. It is unlawful for a person who is under the influence of any drug to a degree that renders him incapable of

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1 safely driving a vehicle to drive a vehicle within this state.

2 C. It is unlawful for a person who has an alcohol  
3 concentration of eight one hundredths or more in his blood or  
4 breath to drive a vehicle within this state.

5 D. Aggravated driving while under the influence of  
6 intoxicating liquor or drugs consists of a person who:

7 (1) has an alcohol concentration of sixteen  
8 one hundredths or more in his blood or breath while driving a  
9 vehicle within this state;

10 (2) has caused bodily injury to a human being  
11 as a result of the unlawful operation of a motor vehicle while  
12 driving under the influence of intoxicating liquor or drugs; or

13 (3) refused to submit to chemical testing, as  
14 provided for in the Implied Consent Act, and in the judgment of  
15 the court, based upon evidence of intoxication presented to the  
16 court, was under the influence of intoxicating liquor or drugs.

17 E. ~~Every~~ A person under first conviction pursuant  
18 to this section shall be punished, notwithstanding the  
19 provisions of Section 31-18-13 NMSA 1978, by imprisonment for  
20 not more than ninety days or by a fine of not more than five  
21 hundred dollars (\$500), or both; provided that if the sentence  
22 is suspended in whole or in part or deferred, the period of  
23 probation may extend beyond ninety days but shall not exceed  
24 one year. Upon a first conviction pursuant to this section, an  
25 offender may be sentenced to not less than forty-eight hours of

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1 community service or a fine of three hundred dollars (\$300).  
2 The offender shall be ordered by the court to participate in  
3 and complete a screening program described in Subsection ~~[H]~~ J  
4 of this section and to attend a driver rehabilitation program  
5 for alcohol or drugs, also known as a "DWI school", approved by  
6 the bureau and also may be required to participate in other  
7 rehabilitative services as the court shall determine to be  
8 necessary. In addition to those penalties, when an offender  
9 commits aggravated driving while under the influence of  
10 intoxicating liquor or drugs, the offender shall be sentenced  
11 to not less than forty-eight consecutive hours in jail. If an  
12 offender fails to complete, within a time specified by the  
13 court, any community service, screening program, treatment  
14 program or DWI school ordered by the court, the offender shall  
15 be sentenced to not less than an additional forty-eight  
16 consecutive hours in jail. Any jail sentence imposed pursuant  
17 to this subsection for failure to complete, within a time  
18 specified by the court, any community service, screening  
19 program, treatment program or DWI school ordered by the court  
20 or for aggravated driving while under the influence of  
21 intoxicating liquor or drugs shall not be suspended, deferred  
22 or taken under advisement. On a first conviction pursuant to  
23 this section, any time spent in jail for the offense prior to  
24 the conviction for that offense shall be credited to any term  
25 of imprisonment fixed by the court. A deferred sentence

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1 pursuant to this subsection shall be considered a first  
2 conviction for the purpose of determining subsequent  
3 convictions.

4 F. A second or third conviction pursuant to this  
5 section shall be punished, notwithstanding the provisions of  
6 Section 31-18-13 NMSA 1978, by imprisonment for not more than  
7 three hundred sixty-four days or by a fine of not more than one  
8 thousand dollars (\$1,000), or both; provided that if the  
9 sentence is suspended in whole or in part, the period of  
10 probation may extend beyond one year but shall not exceed five  
11 years. Notwithstanding any provision of law to the contrary  
12 for suspension or deferment of execution of a sentence:

13 (1) upon a second conviction, [~~each~~] an  
14 offender shall be sentenced to a jail term of not less than  
15 seventy-two consecutive hours, forty-eight hours of community  
16 service and a fine of five hundred dollars (\$500). In addition  
17 to those penalties, when an offender commits aggravated driving  
18 while under the influence of intoxicating liquor or drugs, the  
19 offender shall be sentenced to a jail term of not less than  
20 ninety-six consecutive hours. If an offender fails to  
21 complete, within a time specified by the court, any community  
22 service, screening program or treatment program ordered by the  
23 court, the offender shall be sentenced to not less than an  
24 additional seven consecutive days in jail. A penalty imposed  
25 pursuant to this paragraph shall not be suspended or deferred

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1 or taken under advisement; and

2 (2) upon a third conviction, an offender shall  
3 be sentenced to a jail term of not less than thirty consecutive  
4 days and a fine of seven hundred fifty dollars (\$750). In  
5 addition to those penalties, when an offender commits  
6 aggravated driving while under the influence of intoxicating  
7 liquor or drugs, the offender shall be sentenced to a jail term  
8 of not less than sixty consecutive days. If an offender fails  
9 to complete, within a time specified by the court, any  
10 screening program or treatment program ordered by the court,  
11 the offender shall be sentenced to not less than an additional  
12 sixty consecutive days in jail. A penalty imposed pursuant to  
13 this paragraph shall not be suspended or deferred or taken  
14 under advisement.

15 G. Upon a fourth ~~[or subsequent]~~ conviction  
16 pursuant to this section, an offender is guilty of a fourth  
17 degree felony ~~[as provided in]~~ and, notwithstanding the  
18 provisions of Section 31-18-15 NMSA 1978, ~~[and]~~ shall be  
19 sentenced to a ~~[jail term of not less than six months]~~ term of  
20 imprisonment of eighteen months, six months of which shall not  
21 be suspended or deferred or taken under advisement.

22 H. Upon a fifth conviction pursuant to the  
23 provisions of this section, an offender is guilty of a third  
24 degree felony and, notwithstanding the provisions of Section  
25 31-18-15 NMSA 1978, shall be sentenced to a term of

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1 imprisonment of three years, one year of which shall not be  
2 suspended, deferred or taken under advisement.

3 I. Upon a sixth or subsequent conviction pursuant  
4 to the provisions of this section, an offender is guilty of a  
5 second degree felony and, notwithstanding the provisions of  
6 Section 31-18-15 NMSA 1978, shall be sentenced to a term of  
7 imprisonment of nine years, three years of which shall not be  
8 suspended, deferred or taken under advisement.

9 [~~H-~~] J. Upon any conviction pursuant to this  
10 section, an offender shall be required to participate in and  
11 complete, within a time specified by the court, an alcohol or  
12 drug abuse screening program and, if necessary, a treatment  
13 program approved by the court. The requirement imposed  
14 pursuant to this subsection shall not be suspended, deferred or  
15 taken under advisement.

16 [~~I-~~] K. Upon a first conviction for aggravated  
17 driving while under the influence of intoxicating liquor or  
18 drugs pursuant to the provisions of Subsection D of this  
19 section, as a condition of probation, an offender shall be  
20 required to have an ignition interlock device installed and  
21 operating for a period of one year on all motor vehicles driven  
22 by the offender, pursuant to rules adopted by the bureau.  
23 Unless determined by the sentencing court to be indigent, the  
24 offender shall pay all costs associated with having an ignition  
25 interlock device installed on the appropriate motor vehicles.

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1 If an offender drives a motor vehicle that does not have an  
2 ignition interlock device installed on the motor vehicle, the  
3 offender may be in violation of the terms and conditions of his  
4 probation.

5 [J-] L. Upon a first conviction for driving while  
6 under the influence of intoxicating liquor or drugs pursuant to  
7 the provisions of Subsection A, B or C of this section, as a  
8 condition of probation, an offender may be required to have an  
9 ignition interlock device installed and operating for a period  
10 of one year on all motor vehicles driven by the offender,  
11 pursuant to rules adopted by the bureau. Unless determined by  
12 the sentencing court to be indigent, the offender shall pay all  
13 costs associated with having an ignition interlock device  
14 installed on the appropriate motor vehicles. If an offender  
15 drives a motor vehicle that does not have an ignition interlock  
16 device installed on the motor vehicle, the offender may be in  
17 violation of the terms and conditions of his probation.

18 [K-] M. Upon any subsequent conviction pursuant to  
19 this section, as a condition of probation, a subsequent  
20 offender shall be required to have an ignition interlock device  
21 installed and operating for a period of at least one year on  
22 all motor vehicles driven by the subsequent offender, pursuant  
23 to rules adopted by the bureau. Unless determined by the  
24 sentencing court to be indigent, the subsequent offender shall  
25 pay all costs associated with having an ignition interlock

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1 device installed on the appropriate motor vehicles. If a  
2 subsequent offender drives a motor vehicle that does not have  
3 an ignition interlock device installed on the motor vehicle,  
4 the subsequent offender may be in violation of the terms and  
5 conditions of his probation.

6 [L-] N. In the case of a first, second or third  
7 offense under this section, the magistrate court has concurrent  
8 jurisdiction with district courts to try the offender.

9 [M-] O. A conviction pursuant to a municipal or  
10 county ordinance in New Mexico or a law of any other  
11 jurisdiction, territory or possession of the United States that  
12 is equivalent to New Mexico law for driving while under the  
13 influence of intoxicating liquor or drugs, and that prescribes  
14 penalties for driving while under the influence of intoxicating  
15 liquor or drugs, shall be deemed to be a conviction pursuant to  
16 this section for purposes of determining whether a conviction  
17 is a second or subsequent conviction.

18 [N-] P. In addition to any other fine or fee  
19 [~~which~~] that may be imposed pursuant to the conviction or other  
20 disposition of the offense under this section, the court may  
21 order the offender to pay the costs of any court-ordered  
22 screening and treatment programs.

23 [O-] Q. As used in this section:

24 (1) "bodily injury" means an injury to a  
25 person that is not likely to cause death or great bodily harm

1 to the person, but does cause painful temporary disfigurement  
2 or temporary loss or impairment of the functions of any member  
3 or organ of the person's body; and

4 (2) "conviction" means an adjudication of  
5 guilt and does not include imposition of a sentence."

6 Section 2. EFFECTIVE DATE.--The effective date of the  
7 provisions of this act is July 1, 2003.

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